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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MARTIN SAMO,

Plaintiff and Appellant,

v.

CLAYDELLE HEALTHCARE, INC.,

Defendant and Respondent.

D072786

(Super. Ct. No. 37-2015-00036587-  
CU-BC-CTL)

MARTIN SAMO,

Plaintiff and Appellant,

v.

SOMERSET HOLDINGS, LLC et al.,

Defendants and Respondents.

D073530

(Super. Ct. No. 37-2015-00036587-  
CU-BC-CTL)

CONSOLIDATED APPEALS from judgments of the Superior Court of San Diego  
County, Eddie C. Sturgeon, Judge. Affirmed.

Stephen F. Lopez ESQ and Stephen F. Lopez for Plaintiff and Appellant.

Wilson Getty, William C. Getty and Mark A. Ginella for Defendant and  
Respondent Claydelle Healthcare, Inc.

Wingert Grebing Brubaker & Juskie, Andrew A. Servais, Amy L. Simonson and  
Mallory Holt for Defendants and Respondents Somerset Holdings, LLC and Jerry Neil  
Carroll.

## I.

### INTRODUCTION

Plaintiff Martin Samo entered into purchase and sale agreements with defendant  
Somerset Holdings, LLC (Somerset) for the purchase of two parcels of real property in  
San Diego County.

One of the two parcels of land that Samo sought to purchase was subject to a lease  
agreement in favor of defendant Claydelle Healthcare, Inc. (Claydelle Healthcare). That  
lease agreement included a right of first refusal for the purchase of the property. The  
lease agreement required that Claydelle Healthcare be provided notice of any pending  
offer for the purchase of the property, so that it could exercise its right of first refusal to  
purchase the property. Consistent with the right of first refusal clause in Claydelle  
Healthcare's lease, the purchase and sale agreement between Samo and Somerset  
included a provision acknowledging Claydelle Healthcare's right of first refusal and  
requiring that notice and an opportunity to indicate its desire to purchase the property be

provided to Claydelle Healthcare consistent with the terms of its lease agreement before the transaction between Somerset and Samo could proceed.

According to the record, Somerset did not provide notice to Claydelle Healthcare of the terms of the purchase and sale agreement between Samo and Somerset in the manner specified in Claydelle Healthcare's lease agreement. As a result, there is disagreement among the parties as to whether the notice provided to Claydelle Healthcare was sufficient pursuant to the terms of the lease and the corresponding terms of the purchase and sale agreement. Claydelle Healthcare ultimately became aware of the pending transaction between Samo and Somerset and indicated its desire to purchase the property. In the meantime, pursuant to a separate provision contained in both of the purchase and sale agreements between Somerset and Samo, Somerset elected to terminate both of those purchase and sale agreements. Somerset eventually sold the property that had been subject to Claydelle Healthcare's lease agreement to Claydelle Healthcare.

Samo filed suit against Somerset, Jerry Carroll, the "manager of Somerset," and Claydelle Healthcare, asserting that he was entitled to purchase both properties pursuant to the purchase and sale agreements. Samo contended that Claydelle Healthcare had been provided sufficient notice and had failed to exercise its right of first refusal to purchase the property within the time frame granted to it in its lease agreement. He further contended that Somerset had breached the contracts by electing to terminate them.

The trial court granted summary judgment in favor of all of the defendants, concluding that Samo had failed to raise triable issues of material fact with respect to his noncompliance with the terms of the two purchase and sale agreements that required that

he deliver deposits for the properties to the escrow holder within a certain time period after two conditions were met. The court also concluded that Claydelle Healthcare was entitled to summary judgment on the ground that it had not been provided proper notice of the purchase and sale agreement between Somerset and Samo under the terms set forth in Claydelle Healthcare's lease and reiterated in the purchase and sale agreement between Somerset and Samo. As a result of the defects in the notice, the court concluded that Claydelle Healthcare had not forfeited its right of first refusal by failing to respond within 15 days of the insufficient notice.

On appeal, Samo contends that the trial court erred in granting summary judgment in favor of the defendants. He asserts that Claydelle Healthcare failed to timely exercise its right of first refusal, and that he is entitled to enforce the purchase and sale agreements as to both properties.

Although all of the parties devote a significant portion of their briefing to discussing whether Claydelle Healthcare received sufficient notice of Samo's offer to purchase one of the two properties at issue, pursuant to the right of first refusal provision included in Claydelle Healthcare's lease agreement, we conclude that as a preliminary matter, Samo cannot establish his causes of action against any of the defendants because the undisputed facts demonstrate that he failed to meet the strict and express terms of the purchase and sale agreements at issue in this case with respect to delivery of his deposit money. As a result of this failure, Somerset was entitled to unilaterally terminate both of the purchase and sale contracts, and its decision to do so did not amount to a breach of contract. Because Samo was not entitled to enforce the purchase and sale agreement for

either of the two properties due to his failure to comply with the terms of the agreements pertaining to delivery of his deposit money to the escrow holder, he cannot prevail against any of the defendants.

We therefore conclude that the trial court correctly granted summary judgment in favor of defendants. We affirm the judgment of the trial court.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND

#### A. *Factual background*

In 2015, Somerset owned properties located at 151 Claydelle Avenue (the Claydelle Property) and 220 Avocado Avenue (the Avocado Property), both of which are in El Cajon, California.

During the relevant time period, Somerset was leasing the Claydelle Property to Claydelle Healthcare pursuant to a written lease agreement that was originally entered into in the mid-1980s. The lease agreement included a term that provided Claydelle Healthcare with a right of first refusal to purchase the Claydelle property. Specifically, the lease included the following relevant language:

#### "25. Right of First Refusal

"In the event LESSOR, or any owner of any portion of or any interest in the real property of which the leased premises are comprised, during the term hereof, and any extension or renewal thereof, and for a one-year period following the expiration of the term hereof and any extension or renewal thereof, elects to sell or lease or otherwise transfer its interest in the leased premises or the management or operation thereof to a third party (that is, to someone other than LESSEE), then it is agreed that LESSEE shall have the right of first refusal on the purchase or lease or other transfer of said

interest and if LESSOR or any successor of LESSOR shall offer the demised premises or any part thereof or interest therein for sale or lease or other transfer, LESSOR shall give written notice to LESSEE of the terms of any bona fide offer received therefor. LESSEE shall have a period of fifteen (15) days from and after receipt of such notice in which to agree to enter into a purchase agreement or lease or other transfer with LESSOR for such premises, or for such interest therein. The terms of such purchase or lease agreement or other transfer shall be the same as those contained in said bona fide offer except that the LESSEE shall have at least ninety (90) days after the execution of such agreement in which to comply with its terms."

With respect to notice, the Lease provided:

"24. Notices

"All notices, demands, or communications of any kind which may be required or be desired to be served by the LESSOR or the LESSEE upon the other under the terms of this Lease or otherwise, shall be sufficiently served, given or made (as an alternative to personal service) if mailed by certified mail, with postage prepaid, if intended for (i) LESSOR, addressed to 671 South Mollison Ave., El Cajon, Calif. 92020, or such other addresses as may hereafter be furnished to the LESSEE in writing, and (ii) LESSEE, addressed to the LESSEE at Post Office Box U, Quincy, California 95971, or such other addresses as may be hereafter furnished to the LESSOR in writing. Such service shall be deemed complete at the expiration of forty-eight (48) hours from and after the mailing of such notice, demand or communication whether or not same was actually received." (Some underscore omitted.)

Samo made offers to purchase the Claydelle Property and the Avocado Property on September 10, 2015. On September 15, 2015, Samo and Somerset entered into two purchase and sale agreements (the Sale Agreements)—one for the Claydelle Property (the Claydelle Property Sale Agreement) and one for the Avocado Property (the Avocado Property Sale Agreement).

The Claydelle Property Sale Agreement included a provision stating, "[W]ithin 2 . . . business days<sup>[1]</sup> after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder[,], Buyer shall deliver to Escrow Holder a check in the sum of \$25,000.00. If said check is not received by the Escrow Holder within said time period, the Seller may elect to unilaterally terminate this transaction by giving written notice of such election to Escrow Holder whereupon neither Party shall have any further liability to the other under this Agreement." The Avocado Property Sale Agreement contained the same language, but required that a check in the amount of only \$1 be delivered to the identified escrow holder.<sup>2</sup>

Both Sale Agreements identified "Jennifer Olsen" at "Quality Escrow" as the " 'Escrow Holder' " for the transactions.

The Claydelle Property Sale Agreement included a provision acknowledging Claydelle Healthcare's right of first refusal, under paragraph 26, titled "Additional

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<sup>1</sup> The ellipses after the "2" in the sale agreement stand in for "or \_\_\_\_"—i.e., a blank space in which the parties could have chosen another time frame within which the check would have been required to have been delivered. The parties selected the two-day time period, however, and left the space blank.

<sup>2</sup> In addition, the Avocado Property Sale Agreement provided that the Avocado property would be sold for \$1 only "if current tenant does not execute 'first right of refusal' on the purchase of [the Claydelle Property] as per the lease agreement dated July 1, 1986 and buyer closes simultaneously on both [the Claydelle Property] and [the Avocado Property] according to the terms of the fully executed purchase agreement."

However, if the " 'first right of refusal' " was executed by the lessee of the Claydelle Property, the Avocado Property Sale Agreement established that Samo agreed to purchase the Avocado Property for \$75,000. Further, in the event that Samo failed to close on the Claydelle Property for some other reason, Somerset would agree to sell the Avocado Property to Samo for \$100,000.

Provisions." Specifically, the following relevant language was included in the Claydelle Property Sale Agreement:

"1. All executed leases, extension, assignments, estopples [*sic*] and any other documents will be provided to buyer within 30 days of entering escrow or earlier.

"2. Upon full execution of this Purchase sale agreement, 'First Right of refusal' to purchase, will be delivered to the Lessee as defined in the original lease.

"3. Seller to provide Lessee with copy of this fully executed agreement via US Postal Certified mail as per the original lease terms. Service will be deemed complete after 48 hours after [*sic*] delivery as per the original lease terms."

The Claydelle Property Sale Agreement was signed by Samo on September 19, 2015, and by Carroll, on behalf of Somerset, on September 21, 2015. Similarly, the Avocado Property Sale Agreement was signed by Samo on September 19, 2015, and by Carroll, on behalf of Somerset, on September 21, 2015.

On September 23, 2015, an attorney for Somerset sent a copy of the Claydelle Property Sale Agreement to Claydelle Healthcare, in care of "a company named Ensign located in Mission Viejo" via Federal Express. The attorney did not send the document through any other means, and did not send it to the Quincy, California address that was specified as the mailing address for Claydelle Healthcare in the lease agreement.

On October 7, Somerset's attorney delivered the Claydelle Property Sale Agreement to Jennifer Olsen, the Escrow Holder, via an e-mail.



The parties dispute when escrow was opened with respect to the Claydelle Property. Somerset, Carroll, and Claydelle Healthcare contend that escrow was opened on October 7, 2015. Samo contends that escrow was opened on October 9, 2015.

Samo made a wire transfer of \$25,000 to the escrow account for the Claydelle Property transaction on October 13, 2015.

On October 14, Samo sent a cashier's check for \$25,000 to "Quality Escrow, Inc." The check included a reference to the Claydelle Property escrow number.

"On or about October 15, 2015," Somerset told Samo that it was cancelling escrow and terminating both Sale Agreements.

The record does not demonstrate when the Avocado Property Sale Agreement was delivered to Jennifer Olsen. However, it does establish that escrow was opened for the Avocado Property on October 15, 2015.

In the meantime, on October 12, Somerset's agent advised Samo's agent, Jeffrey Davies, that Claydelle Healthcare was claiming that it had not received proper notice of its "Right of First Refusal." On October 13, Claydelle Healthcare sent correspondence to Matt Deen, counsel for Somerset, informing him that it had come to Claydelle Healthcare's attention that Somerset had accepted an offer to purchase the Claydelle property, and stating that Somerset had failed to "first deliver[ ] written notice of the offer via certified mail as expressly required by Section 25 [of the lease agreement]." Claydelle Healthcare's position was that any resulting contract between Samo and Somerset was "void or voidable." Claydelle Healthcare indicated its desire to exercise its

right of first refusal to enter into a purchase agreement for the Claydelle Property on "substantially the same terms as those provided in the first offer."

Somerset transferred title in the Claydelle Property to Claydelle Healthcare on October 30, 2015.

*B. Procedural background*

On October 30, 2015, Samo filed a complaint against Somerset and Carroll, alleging breach of contract and asserting entitlement to the remedy of specific performance of the Claydelle Property Sale Agreement and the Avocado Property Sale Agreement.

In January 2016, Samo filed an amended complaint in which he added Claydelle Healthcare as a defendant, and included a cause of action for equitable conversion as to Claydelle Healthcare, as well as the other defendants.<sup>3</sup>

Samo ultimately filed the operative complaint, the Second Amended Complaint, against all three defendants in July 2016. In the Second Amended Complaint, Samo asserted causes of action for breach of contract (against Somerset and Carroll) and equitable conversion (against all three defendants), and sought damages and specific performance of the Sale Agreements.

All three defendants moved for summary judgment on the Second Amended Complaint.<sup>4</sup>

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<sup>3</sup> Samo did not assert a cause of action for breach of contract against Claydelle Healthcare.

After full briefing on the matter, the trial court held a hearing on the defendants' motions. At the conclusion of the hearing, the trial court entered an order granting the defendants' motions for summary judgment.

With respect to Somerset and Carroll, the trial court concluded that Samo had "failed to raise triable issues of material fact [that] he timely complied with depositing \$25,000 into [the] Claydelle[ Property's] escrow and \$1 into the Avocado [Property's] escrow. Thus, pursuant to the terms of the two purchase sale agreements . . . , defendant Somerset is entitled to unilaterally close escrow." The court determined that the same reasoning applied to entitle Carroll to summary judgment on the operative complaint, as well.

With respect to Claydelle Healthcare, the trial court determined, "Federal Express does not equate to service by certified mail or personal service. Therefore, defendant Claydelle did not have proper notice of the right to exercise its option of first refusal . . . and Claydelle[ Healthcare's] motion for summary judgment is granted."

The trial court entered a judgment in favor of Claydelle Healthcare on Samo's complaint on July 27, 2017. On September 18, 2017, Samo filed a notice of appeal from this judgment.

However, on December 7, 2017, after the filing of Samo's notice of appeal, the trial court entered an "Amended Judgment," which established that the judgment was

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<sup>4</sup> Claydelle Healthcare filed its own motion for summary judgment, and Somerset and Carroll filed a joinder motion for summary judgment.

being entered in favor of Claydelle Healthcare, as well as Somerset and Carroll. In January 2018, Samo filed a separate notice of appeal from the "Amended Judgment."

Because of the filing of two separate notices of appeal, this matter proceeded in this court as two separate appeals: One with respect to defendant Claydelle Healthcare (case No. D072786), and the other with respect to defendants Somerset and Carroll (case No. D073530). The parties requested consolidation of the appeals, but this court denied the request. After having the benefit of full consideration of the issues raised by the parties on appeal, however, we have determined that consolidation of the two appeals is appropriate and would serve judicial economy. We have therefore issued an order consolidating case Nos. D072786 and D073530 for purposes of appeal.

### III.

#### DISCUSSION

##### A. *Summary judgment standards*

"Summary judgment and summary adjudication provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. [Citations.] A defendant moving for summary judgment or summary adjudication may demonstrate that the plaintiff's cause of action has no merit by showing that (1) one or more elements of the cause of action cannot be established, or (2) there is a complete defense to that cause of action." (*Collin v. CalPortland Co.* (2014) 228 Cal.App.4th 582, 587 (*Collin*).)

Generally, "the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of

material fact; if [that party] carries [t]his burden of production, [the moving party] causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) In moving for summary judgment, "all that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action—for example, that the plaintiff cannot prove element X." (*Id.* at p. 853.) "A defendant moving for summary judgment or summary adjudication need not conclusively negate an element of the plaintiff's cause of action. [Citations.] Instead, the defendant may show through factually devoid discovery responses that the plaintiff does not possess and cannot reasonably obtain needed evidence." (*Collin, supra*, 228 Cal.App.4th at p. 587.)

"After the defendant meets its threshold burden [to demonstrate that a cause of action has no merit], the burden shifts to the plaintiff to present evidence showing that a triable issue of one or more material facts exists as to that cause of action or affirmative defense. [Citations.] The plaintiff may not simply rely on the allegations of its pleadings but, instead, must set forth the specific facts showing the existence of a triable issue of material fact. [Citation.] A triable issue of material fact exists if, and only if, the evidence reasonably permits the trier of fact to find the contested fact in favor of the plaintiff in accordance with the applicable standard of proof." (*Collin, supra*, 228 Cal.App.4th at p. 588.)

"On appeal, the reviewing court makes ' "an independent assessment of the correctness of the trial court's ruling [regarding summary judgment], applying the same

legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law." ' ' " (*Hesperia Citizens for Responsible Development v. City of Hesperia* (2007) 151 Cal.App.4th 653, 658.) Our task is to determine whether a triable issue of material fact exists. (*Collin, supra*, 228 Cal.App.4th at p. 588.) In independently examining the record on appeal "to determine whether triable issues of material fact exist," we " 'consider[ ] all the evidence set forth in the moving and opposition papers except that to which objections were made and sustained.' " (*Ambriz v. Kelegian* (2007) 146 Cal.App.4th 1519, 1530.)

B. *Summary judgment was appropriate with respect to Somerset*

In the operative pleading, Samo alleged causes of action for breach of contract and equitable conversion as to Somerset.<sup>5</sup> We address these two causes of action separately.

1. *Breach of contract*

"The essential elements of a claim of breach of contract, whether express or implied, are the contract, plaintiff's performance or excuse for nonperformance, defendant's breach, and the resulting damages to plaintiff." (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 439.)

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<sup>5</sup> Although Samo separately purported to allege a "cause of action" for specific performance, it is clear that specific performance is an equitable *remedy*, not a cause of action. (See *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1360, fn. 2 ["specific performance and injunctive relief are equitable remedies and not causes of action for injuries"].)

To the extent that determining whether Somerset breached either of the Property Sale Agreements with Samo requires us to interpret the contracts between them, we apply the following principles of contract interpretation. Fundamentally, the goal of contract interpretation is to give effect to the mutual intention of the parties as it existed at the time of contracting. (Civ. Code, § 1636.) When a contract is set forth in writing, the intention of the parties is to be ascertained from the writing alone, if possible. (Civ. Code, § 1639; *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 955.) If the language of a contract is clear and explicit, it governs. (Civ. Code, § 1638.) Further, "[l]anguage in a contract must be construed in the context of that instrument as a whole, and in the circumstances of that case, and cannot be found to be ambiguous in the abstract." [Citation.] (*State of California v. Continental Ins. Co.* (2012) 55 Cal.4th 186, 195.)

The proper interpretation of a written contract "is essentially a judicial function," and is readily susceptible to resolution on a motion for summary judgment. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865.)<sup>6</sup> "When a trial court's interpretation of a written agreement is appealed and no conflicting extrinsic evidence was admitted, the interpretation of the contract is a question of law which we review de

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<sup>6</sup> A contract may be reviewed "de novo where '(a) the trial court's contractual interpretation is based solely upon the terms of the written instrument without the aid of extrinsic evidence; (b) there is no conflict in the properly admitted extrinsic evidence; or (c) the trial court's determination was made on the basis of improperly admitted incompetent evidence.'" (*Warburton/Buttner v. Superior Court* (2002) 103 Cal.App.4th 1170, 1180.)

novo. [Citations.]' [Citation.]" (*Rancho Pauma Mutual Water Co. v. Yuima Municipal Water Dist.* (2015) 239 Cal.App.4th 109, 115.)

In this case, both the Claydelle Property Sale Agreement and the Avocado Property Sale Agreement gave Somerset the right to "unilaterally terminate" the sale transactions in the event that Samo failed to timely deliver the required deposit to the Escrow Holder. Specifically, for example, the Claydelle Property Sale Agreement states that Samo "shall deliver to Escrow Holder a check in the sum of \$25,000," and sets forth that he was to do so "within 2 . . . business days after both parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder." If the check was "not received by Escrow Holder within said time period then Seller may elect to unilaterally terminate this transaction."

The parties do not dispute that they executed the Claydelle Property Sale Agreement "on or about September 19, 2015." The parties also do not dispute that the Claydelle Property Sale Agreement was delivered to the "Escrow Holder" identified in the sale agreement—i.e., Jennifer Olsen—through an e-mail sent by Somerset's attorney on October 7, 2015. The parties agree that Samo made a wire transfer of \$25,000 for the deposit on the Claydelle Property on October 13, 2015.

On our own motion, we take judicial notice of the 2015 calendar (see Evid. Code, §§ 452, subd. (h), 459, subd. (a)(2); *Douglas v. Janis* (1974) 43 Cal.App.3d 931, 936 [taking judicial notice of a calendar for purposes of determining timing requirements]). In 2015, October 7 fell on a Wednesday. October 13, 2015 was the following Tuesday.



Pursuant to the express terms of the Claydelle Property Sale Agreement, Samo was to deliver to Jennifer Olsen a check for \$25,000 "within 2 . . . business days after" October 7, 2015, the day that the Claydelle Property Sale Agreement was delivered to Olsen. Two business days after October 7, 2015 would have been Friday, October 9, 2015. Again, it is undisputed that Samo did not send any deposit money for the Claydelle Property until Tuesday, October 13, 2015. By the clear terms of the Claydelle Property Sale Agreement, Samo failed to meet the delivery requirement for the \$25,000 deposit for the Claydelle Property. As a result, Somerset was entitled to "elect to unilaterally terminate" the Claydelle Property Sale Agreement.

Rather than argue that he delivered the deposit check within two days after delivery of the executed Claydelle Property Sale Agreement to Olsen, Samo contends that the Claydelle Property Sale Agreement should be given a different interpretation as to when delivery of his check was required. Specifically, Samo contends that an "equally plausible interpretation[ ]" of the Claydelle Property Sale Agreement's deposit provision is that the "obligation to deposit the money in escrow was not triggered until the *escrow was actually opened*." (Italics added.) According to Samo, "[a] proper interpretation of the contract is that Samo's obligation to deliver his deposit to the escrow agent did not occur until two business days after escrow was actually accepted and opened by the escrow agent." He argues that this is because an escrow agent has "no obligation to accept the escrow or the deposit."

We reject Samo's alternative contractual interpretation. The Claydelle Property Sale Agreement leaves no ambiguity as to what two events had to occur in order to

trigger the running of the two-day period for Samo to deliver a check for \$25,000 to the Escrow Holder, and neither of those events is the formal opening of escrow. Rather, the Claydelle Property Sale Agreement required that within two days of (1) both parties executing the Claydelle Property Sale Agreement and (2) the delivery of the executed Claydelle Property Sale Agreement to the person identified in the agreement as the "Escrow Holder," Samo's deposit check had to be delivered to the same "Escrow Holder." The Claydelle Property Sale Agreement does not refer to the opening of escrow with respect to the delivery of the deposit check, and it does not link the obligation to deliver the check to the opening of escrow. If the parties had wanted the obligation to deliver the deposit check to be linked to the opening of escrow, they could have included that in the Claydelle Property Sale Agreement.

We therefore conclude that Somerset had the right to unilaterally terminate the Claydelle Property Sale Agreement, given Samo's failure to timely deliver the deposit for the property to the Escrow Holder. Somerset's decision to terminate the Claydelle Property Sale Agreement thus does not amount to a breach of contract.

The Avocado Property Sale Agreement was virtually identical to the Claydelle Property Sale Agreement with respect to Samo's obligation to deliver a deposit to the Escrow Holder, but it required that only \$1 be delivered to the "Escrow Holder." The record is somewhat less clear as to what occurred with respect to the delivery of the executed Avocado Property Sale Agreement and Samo's deposit. However, the record does not demonstrate that the trial court erred in concluding that Samo was not entitled to enforce the Avocado Property Sale Agreement.

It is undisputed that both parties executed the Avocado Property Sale Agreement by at least September 21, 2015. The record does not disclose the precise date that the executed Avocado Property Sale Agreement was delivered to Jennifer Olsen, the "Escrow Holder." However, the parties do not dispute that escrow for the Avocado Property was opened as of October 15, 2015. Therefore, at the latest, the executed Avocado Property Sale Agreement must have been delivered to Olsen on or before October 15, 2015, which was a Thursday. Two business days after October 15, 2015 would have been Monday, October 19.

Somerset contends that Samo's \$1 deposit for the Avocado Property was not delivered to Olsen by October 19, 2015. Instead, Somerset asserts that Samo did not make the \$1 deposit until many days later, on October 28, 2015. The evidence supporting Somerset's factual assertion is an e-mail sent by Jennifer Olsen to Jeff Davies, whom Samo identifies in filings in this case as his agent, in which she states, "Attached please find Cancellation Instruction for the buyer to sign to return the \$1.00 EMD *received on 10/28/2015* to him." (Italics added.)

Samo contends that this fact is in dispute. However, Samo does not provide any direct evidence to place in dispute that the \$1 deposit for the Avocado Property was delivered to Olsen on October 28, 2015. Rather, the evidence on which he relies in arguing that there remains a dispute about whether he timely made the requisite deposit under the Avocado Property Sale Agreement is his declaration, in which he states that on "October 14, 2015" he sent "a cashier's check for the Avocado property." However, a review of a copy of the cashier's check to which Samo refers establishes that the check

specifically references the escrow number for the Claydelle Property, not the Avocado Property. Another item in the record further establishes that no deposit was timely sent to the Escrow Holder with respect to the Avocado Property within the necessary time period. Specifically, in an e-mail dated October 27, 2015, Jennifer Olsen informs Davies that "[b]oth deposits were made to the Claydelle escrow as they both referenced that escrow number." She further confirms that "no one advised regarding an EMD for [the Avocado Property] transaction." Samo's reference to a cashier's check for a deposit amount that does not reflect the deposit amount required under the Avocado Property Sale Agreement and that references the Claydelle Property escrow, and not the Avocado Property escrow, is insufficient to create a triable issue of material fact with respect to whether he made the required deposit for the Avocado Property within the time constraints of the Avocado Property Sale Agreement.

## *2. Equitable conversion*

Under the equitable conversion doctrine, "[w]hen a binding executory contract for the sale of real property is entered into, an equitable conversion of the property . . . occurs under which the purchaser is deemed to be the equitable owner of the property and the seller the owner of the purchase money, with an equitable lien on the property for the balance of the unpaid purchase price. The vendor is regarded as holding the legal title in trust for the purchaser; the purchaser, in turn, is considered the trustee of the purchase money for the benefit of the vendor." (*Mamula v. McCulloch* (1969) 275 Cal.App.2d 184, 193–194 (*Mamula*); *Estate of Reid* (1938) 26 Cal.App.2d 362, 367–370.) "The equitable conversion thus deemed to have been effected *may or may not be absolute*,

depending on whether the terms of the contract are subsequently complied with. If there is no default in this regard, and if the purchaser performs all conditions precedent that entitle him under the agreement to a conveyance of the property on a given day, he will on that day be considered to be the owner of the property, and the vendor will be regarded as the owner of the purchase money. The fact that the vendor may refuse to perform his part of the agreement and refrain from making the conveyance to which the purchaser is entitled on compliance with the provisions of the contract will not affect the status of the parties or their rights in the property, for when a purchaser has performed or offered to perform his covenants, at the time provided in the contract for the conveyance of the property, he will be treated in equity from that time on as the owner of the property, and the vendor will be regarded as merely holding the legal title thereto in trust for him. [Citations.]" (*Mamula, supra*, 275 Cal.App.2d at p. 194.)

In other words, "[a]n *unconditional* contract for the sale of land, of which specific performance would be decreed, grants the purchaser equitable title, and equity considers him the owner. [Citations.]" (*Parr-Richmond Industrial Corp. v. Boyd* (1954) 43 Cal.2d 157, 165 (*Parr-Richmond*), italics added [no equitable conversion for property tax purposes because the seller did not have merchantable title and the sale contract was not subject to specific enforcement at the time of assessment].)

The equitable conversion doctrine " 'is a mere fiction resting upon the principle that equity regards things which are directed to be done as having actually been performed where nothing has intervened which ought to prevent such a performance.' [Citation.]" (*Parr-Richmond, supra*, 43 Cal.2d 157, 165–166.) The doctrine will not

apply, however, "where the contracting parties demonstrate an intention to the contrary" (*id.* at p. 166), or "when 'it would compel an inequitable result . . . ' [Citation]." (*Ocean Avenue LLC v. County of Los Angeles* (2014) 227 Cal.App.4th 344, 352 (*Ocean Avenue*).)

As cases discussing equitable conversion demonstrate, the doctrine of equitable conversion is typically utilized with respect to the seller's and purchaser's rights vis-à-vis a third party. For example, *Ocean Avenue, supra*, 227 Cal.App.4th at page 352, involved a question of whether there had been a change in ownership for purposes of property tax assessment under a certain set of facts. The County of Los Angeles was arguing that an equitable conversion had occurred to effect a change in ownership that was sufficient to trigger a property tax reassessment. (*Ibid.*) Similarly, *Parr-Richmond, supra*, 43 Cal.2d at page 165, involved the question "whether the challenged tax assessments may be supported under the doctrine of equitable conversion." There, the plaintiff had "brought two actions to recover taxes paid under protest on certain property in Richmond for the tax years 1948–1949 and 1949–1950." (*Id.* at p. 159.) The question at issue involved the date on which the plaintiff had become the owner of the property, and whether equitable conversion could support a taxing authority's assessment of taxes prior to the date the plaintiff had taken formal title to the property. (*Id.* at pp. 159, 165–167.) We therefore question the applicability of the doctrine of equitable conversion to the facts alleged in the complaint.

Nevertheless, even if we were to attempt to apply the doctrine of equitable conversion in this case, we would conclude, as did the courts in *Ocean Avenue, supra*,

227 Cal.App.4th at page 352 and *Mamula, supra*, 275 Cal.App.2d 184 at page 195, that there can be no valid claim for equitable conversion where one of the parties fails to perform as required or to satisfy a condition precedent under the contract. Here, under the undisputed facts demonstrated with respect to summary judgment, Samo failed to satisfy one of the contractual terms, i.e., the requirement that he deliver the deposit money to the Escrow Holder within two days of two conditions having occurred. As a result, there can be no valid claim for application of the equitable conversion doctrine. There thus remain no material facts in dispute as to Samo's asserted cause of action for equitable conversion against Somerset.

*C. Summary judgment was appropriate as to Carroll*

On appeal, Samo makes no separate arguments with respect to summary judgment having been granted in favor of Carroll. As Carroll and Somerset point out in their joint brief, Samo's failure to provide argument or legal authority to address the question of Carroll's liability as to any of the causes of action alleged has effectively forfeited any further contention with respect to Carroll. We agree. When an appellant seeking reversal of a summary judgment fails to present argument on an issue that provides an independent ground for summary judgment, we may presume that the judgment is correct on that ground and may affirm summary judgment on this basis alone. (See *Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125–126.) Given Samo's failure to present any argument on appeal as to Carroll, we may that presume the judgment is correct with respect to Carroll.

D. *Summary judgment was appropriate as to Claydelle Healthcare*

For the same reason that we conclude that there remain no material facts in dispute as to Samo's cause of action for equitable conversion against Somerset, we also conclude that Samo cannot succeed on a cause of action for equitable conversion against Claydelle Healthcare. Samo cannot demonstrate that he was ever entitled to a conveyance of title to the Claydelle Property, given that Somerset was entitled to, and did, terminate the Claydelle Property Sale Agreement. Claydelle Healthcare was therefore entitled to summary judgment, as well.

IV.

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

AARON, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.